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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,832	02/02/2005	Sung-Sick Woo	DI.01	4579
25871	7590	03/12/2007	EXAMINER	
SWANSON & BRATSCHUN L.L.C.			MELLER, MICHAEL V	
1745 SHEA CENTER DRIVE			ART UNIT	PAPER NUMBER
SUITE 330			1655	
HIGHLANDS RANCH, CO 80129				
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/12/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/522,832	WOO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael V. Meller	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 February 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 7 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 6, 8, 14, 15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of *Phyllostachys nigra* MUNRO var. *henonis* STAPF and lower alcohol solvent in the reply filed on 2/7/2007 is acknowledged.

Thus, claims 5 and 7 are withdrawn from further consideration as being drawn to non-elected subject matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 403251518 (abstract).

JP teaches that *Phyllostachys nigra* MUNRO var. *henonis* STAPF is extracted with ethanol (lower alcohol).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 8, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 409278662 (abstract) in view of JP 403251518 (abstract).

JP '662 teaches that *Phyllostachys nigra* MUNRO var. *henonis* STAPF is extracted with ether but not with a lower alcohol such as ethanol.

JP '518 teaches that *Phyllostachys nigra* MUNRO var. *henonis* STAPF is extracted with ethanol (lower alcohol).

It would have been obvious to extract the extract of JP '662 with ethanol instead of ether since JP '518 makes it clear that the claimed plant can be extracted either with ether or ethanol, thus it is obvious to one of ordinary skill in the art to extract with ethanol instead of ether since as established by JP '518, ether is interchangeable with ethanol when extracting with this specific extract.

Claims 1-4, 6, 8, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naito et al. in view of Jung et al.

Naito teaches that *Phyllostachys nigra* MUNRO var. *henonis* STAPF is extracted with water but not with a lower alcohol such as ethanol, see entire reference, especially, col. 2, lines 45-55, the claims.

Jung teaches that *Phyllostachys nigra* MUNRO var. is extracted with water and alcohol, specifically, ethanol (lower alcohol), see entire reference especially, paragraphs 15, 32, the claims.

It would have been obvious to extract the extract of Naito with ethanol instead of water since Jung makes it clear that the claimed plant can be extracted with water and/or ethanol, thus it is obvious to one of ordinary skill in the art to extract with ethanol and/or water since as established by Jung, water and/or ethanol can be used when extracting with this specific extract.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael V. Meller  
Primary Examiner  
Art Unit 1655

MVM